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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,369	04/13/2004	Marc Richelsoph	2184.00091	4869

7590 11/04/2004

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EXAMINER

STOKES, CANDICE CAPRI

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/823,369

Applicant(s)

RICHELSOPH, MARC

Examiner

Candice C. Stokes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21, 23-28 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-20, 23-25 and 31 is/are rejected.
- 7) ☒ Claim(s) 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04/13/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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**DETAILED ACTION*****Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 20 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,740,086. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between Claim 20 of the application and Claim 1 of the patent lies in the fact that the patent claim includes many more elements and is thus much more specific. Thus the invention of Claim 1 is in effect a "species" of the "generic" invention of Claim 20. It has been held that the generic invention is "anticipated" by the "species". See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since Claim 20 is anticipated by Claim 1 of the patent, it is not patentably distinct from Claim 1.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,6,9-14,16-21,23,27-28 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Richelsoph (USPN 5,964,760). Richelsoph discloses a screw and rod fixation assembly comprising a screw 12" with a screw head 40 having fixing means 70,14" for fixing the screw 12" from movement relative to the assembly. The fixing means having an inner surface wall having a gripping portion and a non-gripping portion. The assembly further comprising a substantially annular ring 70 including an edge portion extending about a center axis and having a frustoconical surface tapering outwardly toward edge the edge portion for engaging the screw head 40 while allowing a portion of the screw 12" to pass therethrough as shown in Fig. 7. Rod seating means 16 is operatively engaged with the fixing means for seating a rod therein including at least one flexible portion 80 capable of being compressed against a rod seated within the rod seating means. Locking means 22 is for securing and engaging the rod and rod seating means. This also anticipates Claims 23,27-28 and 31. As to Claims 2 and 3, "referring more specifically to the rod receiving mechanism 14, it includes a body portion 30 having two arms 32,34 extending therefrom and being substantially parallel relative to each other. The two arms 32,34 and the body portion 20 form a U-shaped inner surface defining the seat portion 16 thereof" (col.4, lines 3-8). Regarding Claim 6, rod seating means 16 includes a body portion 72 from which the at least one flexible portion extends. As to Claims 9-11 and 17-

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18, the fixing means 14" includes an inner surface wall 44 having a gripping portion. Further, "the rod seating member 14" is then disposed over the head portion 40 of the screw element 12" by insertion of the head portion 40 into the seat 44. This is a snapping operation but allows for angular adjustment of the tubular member 14""(col. 6, lines 30-33). Regarding Claims 12-13 and 19, the substantially tubular body has spaced parallel arms as shown in Fig. 5. As to Claim 14, inner surface 44 has an aperture. With regard to Claim 16, "the fixing means 70 is sufficiently collapsible to be snapped into the internal portion 72 of the body element 34". This is accomplished by compressing the fixing means 70 and releasing it inside the internal portion 72. The assembly itself can be made from any durable material, such as carbon composites, nitinol, stainless steel, composite materials, plastics, and plastic compositions" (col.7, lines 65-67 & col8, lines 1-5). As to Claims 20-21, Richelsoph discloses rod seating means 70 with a top portion as shown in Fig. 9 considered to be a body portion with a tapered flexible portion 80 extending therefrom.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5,7-8,15, and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richelsoph in view of Schlapfer et al (USPN 5,520,689). Richelsoph discloses the claimed invention except for the locking means being a set screw with a threaded outer surface.

Schlapfer et al teaches a set screw 7 with a threaded outer surface 12 which engages the threaded

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inner surface 11. As to Claims 8 and 25, Richelsoph discloses "in this manner as the locking mechanism 22 forces the inner wall 18 to contour around and engage the rod 20 seated therein" (col. 3, lines 46-49). It would have been obvious to one having ordinary skill in the art to incorporate the threaded outer and inner surfaces as taught by Schlapfer et al into the screw and rod fixation assembly disclosed by Richelsoph in order to provide a more secure engagement between the locking member and the rod seating means.

#### *Allowable Subject Matter*

Claim 26 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candice C. Stokes whose telephone number is (703) 305-8128. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Candice C. Stokes



Cary F. O'Connor  
Primary Examiner